IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.57 OF 2002

WITH

WRIT PETITION NO.58 OF 2002

W.P. No.57/2004 :

Mr. A. K. Patel. ...Petitioner.

Versus

The Indian Hotels Co.Ltd. ...Respondent.

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Mr. Arshad Shaikh with Mr.Mahesh Londhe i/b. Sanjay Udeshi for the Petitioner.

Mr. C.U. Singh with Mr.K. B. Irani & Mr.M. R. Zaiwala i/b. Mulla & Mulla for the Respondent.

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Erach Mecherwanji Sachinwalla. ...Petitioner.

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CORAM : DR. D.Y. CHANDRACHUD, J.

February 11, 2005.

ORAL JUDGMENT:

The Labour Court by its two judgments dated 23rd July 1999, came to the conclusion that the complaints filed before it by the two Petitioners before the Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, were not maintainable on the ground that neither of the two Petitioners is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and consequently, not an employee within the meaning of the former Act. The orders have been called into question in these proceedings under Article 226. The evidence which has been recorded in the two complaints is common and the facts are similar. The two petitions have been heard together and, therefore, they are being disposed of by this judgment bearing in mind when the need thus arises, the factual distinction, such as there may be, between the two cases.

2. In Writ Petition 57 of 2002, the Petitioner is an Engineer with a degree of Bachelor of Engineering in the Mechanical Branch. The Petitioner initially worked in an industrial establishment at Thane where he had five years' experience. Thereafter, he was appointed as a Senior Engineer in the Indian Hotels Company Ltd., the Respondent to these proceedings. He was confirmed in service after the successful completion of the period of probation. The Petitioner in companion Writ Petition 58 of 2002 was initially appointed on 26th September 1978 as a trainee Engineer and the Petitioner held a Diploma in Engineering. Upon the completion of his training, the Respondent appointed him as an Engineering Assistant on 24th October 1980. He too, was confirmed in service. The services of the two Petitioners were dispensed with by a letter dated 31st May 1988 in pursuance of a clause in the contract of appointment and on the ground that the management had lost confidence. There appears to have been an allegation of bribery involving the two Petitioners and it is alleged that a bribe had been accepted from one of the Contractors

who was carrying on work assigned by the Respondent in connection with the renovation of the Hotel.

3. The orders of termination were challenged before the Labour Court in complaints under Items (1) (a), (b), (d) and (f) of Schedule IV of the Act. The complaints were initially dismissed on the ground of limitation. Subsequently, it is common ground, in writ proceedings before this Court, the delay was condoned and the Labour Court was directed to dispose of the complaints on merits. Pursuant thereto, evidence was recorded before the Labour Court which resulted in the final order dismissing the complaints. That order has been affirmed in revision.

4. In assailing the judgment of the Labour Court and the confirming order of the Industrial Court, Counsel appearing on behalf of the Petitioner urged that: (i) The onus was on the employer to show that the Petitioners were not workmen or that they were in a managerial or supervisory cadre; (ii) Once the duties of an employee

were of a technical nature and the employee was entrusted with the work of looking after machines, the fact that he has some persons working under him would not make him a Manager or Supervisor and the Court has to have due regard to the dominant nature of duties; (iii) The fact that an employee was not a member of the Union or that he was not entitled to Over Time payment was not dispositive of the question as to whether he is a workman; (iv) The evidence on the record would demonstrate that the primary work which the Petitioners were assigned was supervision of the maintenance of machinery in the departments to which the Petitioners were attached and the supervision of labour was merely incidental to the main duties which they performed; (v) Inasmuch as the Petitioners did not supervise either the work of the other workmen, but were vested with the supervision of the maintenance of machines, it could not be held that they performed work of a supervisory nature within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The submission before the Court was that the Labour Court and the Industrial Court ignored material facets of the evidence, warranting interference

under Article 226.

5. On the other hand, on behalf of the Respondents it has been urged that consistent with the settled parameters governing the exercise of the jurisdiction under Article 226, this Court would not be justified in substituting its own judgment for that of the Labour Court and the Industrial Court and that the view which has been arrived at is not only borne out by the evidence, but is consistent with the law laid down by the Supreme Court and by this Court.

6. Before dealing with the submissions which have been urged on behalf of the parties, it would, at the outset, be necessary to note that the settled position in law is that in considering as to whether an employee is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, the Court must have regard to the nature of the duties performed. Designations are not conclusive. An employee may be required by the terms of his engagement to carry out duties of a varied nature and in determining as to whether he or she is a workman, the Court must have regard to the dominant

nature of the duties performed. Apart from these fundamental principles which have now been settled, it would be necessary to note that by the decision of the Constitution Bench of the Supreme Court in **H. R. Adyanthaya Vs. Sandoz (India) Ltd.**, 1994 (5) SCC 737, it is now a settled principle of law that before an employee can be regarded as a workman within the meaning of Section 2(s), it must be demonstrated that the nature of the work which has been performed by the employee, brings him or her within the substantive part of Section 2(s). In other words, it would not be enough to establish that none of the exceptions that has been carved out in Section 2(s) applies, but the fundamental requirement for establishing that an employee is a workman is that the work of the employee must be within the scope and purview of the substantive part of Section 2(s). Since one of the submissions that has been urged by Counsel for the Petitioner is of the onus of establishing whether or not an employee is a workman, it would be necessary to refer to a judgment of the Supreme Court in **Mukesh K.Tripathi vs. Senior Divisional Manager, L. I. C.,** JT 2004 (7) SC 232. While recording its

conclusion in para 24 of the judgment the Supreme Court held thus :

> "From a perusal of the award dated 28.5.1996 of the tribunal, it does not appear that the appellant herein had adduced any evidence whatsoever as regard the nature of his duties so as to establish that he had performed any skilled, unskilled, manual, technical or operational duties. The offer of appointment dated 16.7.1987 read with the scheme clearly proved that he was appointed as an apprentice and not to do any skilled, unskilled, manual, technical job. The onus was on the appellant to prove that he is a workman. He failed to prove the same." (emphasis supplied).

The decision of the Supreme Court, therefore, clearly lays down that the onus lies on the employee that he is a workman within the meaning of Section 2(s). Since in the present case both parties have led evidence on the question as to whether the two Petitioners were workmen within the meaning of Section 2(s), the merits of the dispute can now be considered. For this purpose, it would be convenient to deal with the cases of the two Petitioners separately :

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7. The Petitioner, as already noted earlier, is an Engineer

having completed his B.E. in Mechanical Engineering. The Petitioner was appointed as a Senior Engineer with the Indian Hotels Company. In the course of his cross-examination, the Petitioner stated that he was working in the Project Department and when a new hotel was being set up at New Delhi, he was assigned work towards the fulfillment of that project. He stated that when he joined the services of the Company as a Senior Engineer, there was a hierarchy of employees, including workmen, below him. The relevant part of his cross-examination would have a bearing on the present case and is therefore, culled out :

> "I had joined the services as a Senior Engineer. Below me there were Sectional Engineers. It is true that the Sectional Engineers are divided into different departments like plumbing, fire fighting etc. and each section has its own Sectional officer. It is true below the Sectional Engineer, there are Shift Engineers. The shift Engineers are in charge of the workmen on a particular shift. The Hotel works in 3 shifts and therefore, each shift has a Shift Engineer. It is true that along with Shift Engineer, there are operators, trade man and Helpers who also work. The workers in the Respondents Hotel are organized in a Union."

This part of the evidence of the Petitioner would, therefore, show that

below him as Senior Engineer, there were Sectional Engineers; and below Sectional Engineers were Shift Engineers who were in charge of the workmen on a particular shift. The Petitioner concedes that his wages were not fixed by any settlement with any Union and that he was not a member of the Union. The actual work of implementation of the project was given to a Contractor and the duty of the Petitioner was to ensure that the project was implemented in a specified time and manner. The Petitioner stated that about a thousand employees were engaged by the Civil Contractor on the construction work and in addition, there were employees working on ancillary matters such as air conditioning fittings, swimming pool and other specialised work. The Petitioner deposed that he had to carry out work of checking the operation of machinery installed by the Contractor after which the machine would be handed over to the Chief Engineer. The Petitioner then stated that it was his job to bring to the notice of the Architect any short comings or if the work was not in accordance with specifications. The Petitioner admitted that he was recommending grant of leave to subordinate staff. The Petitioner was vested with

the duty of scrutiny of bills submitted by the Contractors and to decide whether those bills should be recommended for payment.

8. On the completion of the project at Delhi, the Petitioner was transferred back to Mumbai and was placed in the Maintenance Department in 1983. The Maintenance Department, he stated, was headed by the Chief Engineer, below whom was an Executive Engineer and thereafter a Senior Engineer, the Petitioner himself. Each of the Sections of the Maintenance Department had a Sectional Engineer and different types of workmen worked under the Sectional Engineer. The Petitioner stated that there were 12 grades in the service of the Respondent employer: Grade-1 being the lowest and Grade-12 being the highest. The Petitioner was in Grade-9. He stated that he had never received the payment of any overtime allowance. The Petitioner stated in the course of his cross-examination that he was required to maintain a log book and that Shift Engineers would make entries in the log book. Other employees such as Fitters did not make any entries in the log book. Instructions

about the work which was required to be carried were written in the log books and the documents which were produced were shown to the witness who admitted that all the documents bear his signature. The Petitioner specifically admitted that it was his duty to cross-check what was written and that he had power to rectify incorrect entries or recordings. For instance, entries pertaining to fire hydrant testing were made by the operator and actual testing was done by the operator. Whenever there were faults, the Petitioner made remarks and in accordance with his remarks, the operator would need to rectify the faults. The Petitioner specifically admitted that the Shift Operator worked under him and also signed documents pertaining to the testing of the fire hydrant. The attention of the Petitioner was drawn during the course of cross-examination to a series of further documents including the log book for Boiler and he admitted that the actual work of checking was done by an operator and remarks were made by the operator. Similarly, the work of testing in connection with the water softening plant was done by the operator and entries pertaining to coolers were made by the operator. At the time of his

termination, the witness was looking after the work of renovation of rooms which had been entrusted to an outside contractor. The Petitioner in the companion Petition who is an Engineering Assistant stated that he had to carry out his duties and to strictly obey the orders and instructions of the Senior Engineer, the Executive Engineer and the Chief Engineer.

9. One of the witnesses, A.J. Arjani who deposed in support of the case of the Petitioner and who was himself in the Engineering Maintenance Department for some period of time, admitted that his leave applications were forwarded through both the Petitioners to the Chief Engineer. The witness admitted that both the Petitioners were in fact, recommending authorities and that other persons who were working along with him were also sending their applications through them. The witness admitted that he used to follow the instructions written in the A.C. Plant log book and that both the Petitioners used to write instructions in the log book.

10. Apart from this evidence, the Court has on the record, the evidence of two witnesses who deposed on behalf of the employer. The first witness was Vimal Seth, Regional Personnel Manager. The evidence of Mr.Seth was to the effect that the Petitioner had managerial and supervisory duties. He stated that in the Laundry Department, the Laundry machines were automated. As Laundry in charge, the Petitioner was required to deal with any complaint in the Laundry Department and depute personnel to remove the complaint. The second witness who deposed in favour of the employer, Subhash V. Bhide, was earlier working as Chief Engineer and later as General Manager (Engineering), Western Region. The witness stated that the Petitioner upon his transfer back to Mumbai after the construction of Hotel Taj Palace at New Delhi, was completed, was placed in charge of Laundry Maintenance, Fire Fighting Services Maintenance and Monsoon Protection. In all these three Departments, he had to manage and supervise machines and equipment. The actual work on various machines was done by unskilled and Semi Skilled employees as well as contract employees

and this work was controlled by the Petitioner. The Petitioner, the witness stated, was never required to work either manually or clerically. The witness then stated that the actual work in the Laundry Department was managed by the Laundry Manager and his operational staff. The duty of the Petitioner was to ensure that the machines were in order and if anything went wrong to get the machines corrected by the Maintenance staff or employees of the contractors. As head of the Fire Fighting Services, the duty of the Petitioner was to ensure that machines were maintained in good order, that cross checks were done on a periodical basis and that reports were maintained properly. During the months of April to October when renovation work was carried out in the Hotel, the work was entrusted to a Contractor and the Petitioner was in charge of managing, administering, controlling and supervising the work of the Contractor. The Chief Engineer then dealt with the log books which were produced by the Company in the course of its evidence. The witness stated that the log books bore the instructions given by the Petitioner to his subordinate staff and that the instructions in the log

books were written by the Petitioner in his own hand writing against his signature.

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11. The Petitioner in this petition has a Diploma in Engineering and was initially recruited as a trainee Engineer. Upon the completion of his training of two years, the Petitioner came to be absorbed as an Engineering Assistant in Grade-7. In the course of his evidence, the Petitioner adverted to his duties and was cross-examined with reference to the duties to which he had referred. The cross-examination of the Petitioner elucidated the following response :

> "It is true that I was working in different shifts. It is true that the Chief Engineer and executive Engineer were not working in shifts. It is true that I was working as shift incharge." (emphasis supplied)

The Petitioner then stated that the work of maintaining hydraulic pumps and filling of fire extinguishers was to be done by the concerned workmen sometimes under his supervision. The witness furnished the following answer in regard to the workmen who were

attached to his work as shift in charge :

> "Two electricians, plumbers, and two helpers used to work in first and second shift and one electrician, one helper and one plumber used to work in third shift. It is true that they used to work under my supervision whenever I used to be a shift incharge. It is true that at the start of the shift, I used to explain them the duties to be performed by them." (emphasis supplied).

The witness then admitted that the log book for the year 1988 bore his signature as shift in charge or, as the case may be, as Shift Engineer. The witness stated that he had the authority to indent for material required for the purposes of maintenance during his period of duty. The witness admitted that he had authority to recommend leave for employees working under his Department. He stated that he was not a member of the Union and that the benefits of unionised settlements which were applicable from Grade-1 to Grade-6 were not applicable to him. The evidence of Mr.Vimal Seth, Regional Personnel Manager has already been adverted to in connection with the Petitioner in the first petition. In so far as the work of Mr.Sachinwalla was concerned, the witness stated that the Laundry Department had highly automated

machines. The actual operation of the machines and the handling of the machines was a technical duty but, in so far as the Petitioner is concerned, the witness stated that he was performing managerial as well as supervisory duties. The duty of the Petitioner, the witness deposed, was that if there was any fault found in the Laundry Machine, he was to report to the Maintenance Department wherein he was working and he would get the machine repaired by an electrician. The electrician was required to find out and attend to the fault in the machine. The fault would have to be detected either by the electrician or by a mechanic depending on whether the fault was electrical or mechanical in nature. The second witness, Mr. S. V. Bhide, the Chief Engineer stated in the course of his Examination-in-Chief that the Petitioner had to manage and supervise the working of machines and equipments. While the actual work of operating machines was done by an array of other employees, the Petitioner, stated the witness, was required to give orders to other workmen and to supervise, control and administer their work. The duties of the Petitioner included the duty of overseeing that the job performed by

the Contractor was in accordance with the design, safety and good house keeping specifications in that behalf given by various experts. In relation to the Laundry Machines, the duty of the Petitioner was to manage and ensure that the machines were in good order and if anything went wrong, to get the difficulty corrected by the maintenance staff or by employees of the contractor. Similarly, in the Fire Fighting service, the duty of the Petitioner as Head of the Section was to ensure that all machines were maintained in good order, that periodical checks for maintenance were carried out. Monsoon work included the renovation of the Hotel and in that connection the work of the contractor was required to be administered, controlled and supervised by the Petitioner. The witness stated that in the log book which was maintained by the Company instructions given by the Petitioner to his subordinate staff had been produced on the record. It may be noted that in the course of cross-examination of the witness, an effort was made to demonstrate that the Petitioner had been injured in the year 1983 in an accident which took place at the establishment of the Hotel. Similarly, attention of the witness was

also drawn to entries of certain log books which showed that he had to check the sprinkler alarm.

12. An assessment has to be made of these two petitions on the basis of the aforesaid evidence which has come on the record. Section 2(s) of the Industrial Disputes Act, 1947, defines “workman” as any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. The definition, however, excepts certain categories from the definition of the 'workman' and amongst those in clause (iii) are persons employed mainly in a managerial or administrative capacity and in clause (iv) a person employed in a supervisory capacity drawing wages exceeding one thousand six hundred rupees per mensem or exercising either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

13. In the present case, the controversy revolves around the

question as to whether the work which has been carried out by the Petitioners was in a supervisory capacity. If that was so, then they would cease to be workmen since there is no dispute about the factual position that their salaries were in excess of the threshold laid down in Section 2(s). Before this Court, an effort was made to demonstrate on behalf of the Petitioners that the work which was being carried out was the supervision of machines and not supervision of men. On this footing, it was sought to be urged that the work which was carried out by the two Petitioners cannot be regarded as supervisory in nature. In assessing the evidence which has been adduced on the record, the Court must consider the oral and documentary evidence as a whole and stray statements by witnesses cannot be given overriding importance. Essentially as the decided cases would show, the work of supervision consists of overseeing the work of others. A supervisor has the power to bind the employer and it is now trite law that the supervision that has to be exercised is supervision over men and not over machines. These principles emerge from several judgments including decisions of the Supreme

Court as well as of this Court. For instance, **Management of Heavy Engineering Corporation Ltd. vs. Presiding Officer, Labour Court**, 1997 I CLR 16, involved a situation where the Respondent was a doctor who was working as a shift in charge of a first-aid post. He had under him, several employees who were subject to his directions. The Supreme Court held that apart from attending to his own patients, the doctor was required to attend patients of those subordinate to him and that he could not be held to be a workman. **Vimal Kumar Jain vs. Labour Court, Kanpur,** AIR 1988 SC 384 was a case of a Maintenance Engineer who was also required to get the work done from fitters and turners, to grant leave, initiate disciplinary proceedings and make temporary appointments. The Supreme Court held that the employee in question was not a workman.

14. A significant element of guidance can be derived from the decision of the Supreme Court in **Burmah Shell Oil Storage and Distributing Co. of India Ltd. vs. Burmah Shell Management Staff Association**, AIR 1971 SC 922. The decision of a Bench of three

Learned Judges of the Supreme Court lays down both binding principles of law, and an assessment of a factual situation which bears a strong resemblance to the facts of the present case. One of the categories that the Supreme Court was required to consider in the course of its judgment, was the category of Transport Engineers. The Transport Engineer in that case was working in an installation of Burmah Shell which was maintained for the purposes of repairs and maintenance of all motor vehicles owned by the Company as well as for fabrication of bodies of lorries. The Transport Engineer was responsible for the entire work of repairing, servicing and maintenance of vehicles as well as for the work of modification and fabrication of motor lorries. There were several employees working under him in the establishment, persons whom he had guided as regards the manner in which the job would be done. The Transport Engineer in fact, worked with his subordinates. In this back drop, the Supreme Court held that essentially the work of the Transport Engineer was to supervise the work which was being done by skilled and unskilled workmen and to ensure that the work was properly

done. The Court held that the major part of the duty consisted of supervisory work rather than his own personal technical work which was only incidental to the main work of repair, servicing, maintenance and fabrication inasmuch as in his supervisory capacity, he diagnosed the defects, inspected the work done, made his personal tests and certified that the work had been properly carried out. One of the issues that was considered by the Court was the consequence in law of the factual position that the Engineer may by himself also be required to apply and use his own technical knowledge. Dealing with this issue, the Supreme Court held thus:

> "Even if the Transport Engineer uses his technical knowledge, it is used primarily for the purpose of supervising the work done by the skilled manual labourers who carry out the actual repairs, do the servicing or maintenance or complete the fabrication."

The Supreme Court held that there is a distinction between the technical and manual work, as between employments in which the duties that were being entrusted were substantially manual as distinguished from those in which the duties were essentially of a

supervisory nature:

> "If, on the other hand, he is merely employed in supervising the work of others, the fact that, for the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work."

While dealing with the case of a District Engineer, the Court noted that the work of scrutinising tenders that were given to the Contractors as well as checking construction work done by the Contractors and the process of certifying bills was in the nature of supervision. In the case of the Foreman (Chemicals), the main part of his duty was responsibility for the blending of chemicals. A large part of the work was done by the workmen under his supervision and he made random checks. The Supreme Court held that these duties were primarily and substantially of a supervisory nature and his own manual work was only incidental and formed a small part of his duties.

15. Several decisions of this Court have dealt with the attributes

of supervisory work. Among these are decisions of Learned Single Judges in **Ramesh Ramrao Wase V. Commissioner, Revenue Division, Amaravati,** 1995 I LLJ 55; **John Joseph Khokar vs. B.S. Bhadange,** 1997 (3) Mh. L.J. 907 and **Union Carbide (India) Ltd. vs. D. Samuel,** 1998 II CLR 736. A Division Bench of this Court had occasion to deal with the issue inter alia in **Bombay Dyeing and Manufacturing Co.Ltd. vs. R.A. Bidoo,** 1989 II CLR 248. All these judgments emphasise that the essence of the work of a supervisor lies in his duty to oversee the work of others. While doing this, a supervisor has the ability to exercise an element of discretion and judgment. The duty of a supervisor is to ensure that work is carried out in accordance with the norms or guidelines laid down by the management. A supervisor supervises the work of other persons. Mere supervision of plant and machinery, it has been held, would not make a person a supervisor for the purposes of the provisions of Section 2(s) of the Industrial Disputes Act, 1947. These principles also emerge from decisions of other High Courts. In **Blue Star Ltd. vs. N.R. Sharma**, 1975 II LLJ 300, a Learned Single Judge of the

Delhi High Court held that the expression "supervisory" in Section 2(s) is not used in relation to the supervision of an automatic plant and a person does not do supervisory work merely because he looks after a machine. The essence of supervisory work under Section 2(s) is the supervision by a person over the work of others. In **Titaghar Paper Mills Company Ltd. vs. 1st Industrial tribunal, West Bengal**, 1982 LAB I. C. 307, a Learned Single Judge of the Calcutta High Court, dealt with a case where workmen had to maintain and repair machines and the plant and had to work at different stages of production. These employees were not allowed to take any independent decision as to how the other workers would have to work; they had no control over the other workmen and their jobs were not to supervise the work of the workmen simply as supervisors. In this factual situation, the Calcutta High Court held that in such circumstances, it could not be said that simply because the workmen did not run the machines themselves, but stood by and guided ordinary workmen in the running of the machines or in carrying out phases of production that they were purely supervisors. A similar

decision is a judgment of the Allahabad High Court in **U.P. State Sugar Corporation Ltd. vs. The Deputy Labour Commissioner, Meerut**, 1990 (60) FLR 97. In that case, an Assistant Engineer was required to carry out work of a technical nature. He did not allocate any job to the workmen; he had no power to sanction leave or to exercise disciplinary jurisdiction. He was held to be a workman. A more recent judgment is that of the Gujarat High Court in **Shankarbhai Nathalal Prajapati vs. Maize Products,** 2002 III CLR 919, where a Shift Chemist was found to be carrying out work in the Starch Department. These decisions demonstrate that where an employee is essentially performing work of a technical nature bereft of an element of supervision over the work of others, the mere association of others in the actual carrying out of work would not take the employee out of the purview of the definition of the expression "workman" in Section 2(s). Contrariwise, where an employee is required to carry out supervisory work, for the purpose of supervision, the employee may also fall back on his own technical expertise in certain areas while carrying out the work of a supervisor. However,

so long as the essential nature of the work is that of supervision viz., of overseeing the work of others, the fact that the employee has to rely upon his technical expertise would not dilute the primary nature of his duties as a supervisor.

16. In so far as the two cases before the Court are concerned, it is apparent from the evidence which has come on the record that the Petitioner in Writ Petition 57 of 2002 was recruited as a Senior Engineer. In the hierarchy of service, there was below the Senior Engineer, a rung of other officials including the Sectional Engineer, the Shift Engineer and below the Shift Engineer, the workmen who were required to discharge their duties. The Petitioner was in Grade 9 of the service. The service grades spanned from Grade-1 to Grade-12 and it was an admitted position that the wages of the Petitioner were never settled by agreements with the Union. He was not a member of any Union. The facts on the record demonstrate that while carrying out the project work at New Delhi, the Petitioner was required to oversee the work of contractors engaged by the

Company and to ensure that the short comings which were detected in the performance of the construction work were rectified in accordance with the specifications of the employer. On his transfer to Mumbai, the Petitioner was assigned work in the Maintenance Department. As an Engineer, he was vested with the duty of supervision over employees subordinate to him and of overseeing their work. The cross-examination of the Petitioner shows that the actual work of testing in areas such as the Fire Hydrant, the Boiler, and the water softening plant was carried out by operators. The Petitioner deposed that wherever there were faults, he had to issue instructions and that actual operators would then proceed to rectify the faults. This evidence is consistent with the evidence of two witnesses who deposed on behalf of the management. The witnesses for the management, more particularly the Chief Engineer, stated that the Petitioner was not required to carry out any manual or clerical work. His work was to ensure that the machines were in order and if anything was found to be remiss, to get the work corrected by the Maintenance Staff or by the employees of the Contractor. The

Log Books which were produced on record showed that the Petitioner had issued instructions to his subordinates and that the deficiencies were rectified in accordance with those instructions. The employee in question, had the power to recommend leave applications. Leave has been held in decided cases to be a relevant factor relating to the exercise of supervisory functions. That is because a supervisor has to oversee the work of others and this necessarily involves a decision on whether an employee who has applied for leave should be spared in a department at a given point of time. The finding which has been arrived at by the Labour Court and confirmed by the Industrial Court is in accordance with the settled principles of law which have been laid down by the Supreme court and by this Court.

17. In so far as the Petitioner in the companion Writ Petition is concerned, in the course of his cross-examination, he admitted in terms that he was working as Shift Engineer. The Petitioner admitted that he had several workmen who worked in his shift whenever he was assigned as a shift in charge. He explained their duties to these

workmen. The Petitioner had the authority to indent the material required for maintenance during the course of his duties. The Petitioner recommended leave applications. In the case of this petitioner as well, the evidence which has come on the record shows that the nature of the work which he was assigned in the Maintenance Department was inter alia in connection with Laundry, Fire Fighting and Monsoon protection services. The Log Books in which the Petitioner had given instructions to his subordinates were produced on the record. During the course of the cross-examination of the Chief Engineer, efforts were made to show that the Petitioner was injured in the course of an accident in the Laundry and that he had checked the sprinkler alarm. However, this, in my view, does not displace the overwhelming evidence to the effect that the primary nature of duties was supervisory. The primary and dominant nature of the duties of the Petitioner was not manual or technical. On the contrary, the clear admissions of the Petitioner in the course of cross-examination show that the work which was done by him was of a supervisory nature.

18. While considering this case, it would be necessary for the Court to bear in mind the fundamental principle that in exercising this jurisdiction which is of a supervisory nature, the Court would not be justified in interfering where the decisions of the Labour Court and of the Industrial Court in appeal are based on evidence and there is no jurisdictional error or perversity. The limitations on the exercise of this jurisdiction are well settled by the decisions of the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477, **Surya Dev Rai vs. Ram Chander Rai**, AIR 2003 SC 3044 and specifically in the context of a case under Section 2(s), in **Birla Corpn. Ltd. vs. Rajeshwar Mahato,** 2001 (10) SCC 611. The findings of the Courts below to the effect that the Petitioners were not workmen were based on evidence and consistent with the law laid down by the Supreme Court.

19. In the circumstances, I do not find any reason to interfere. The Petitions shall accordingly stand rejected. There shall be no

order as to costs.

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